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March 6, 2012

Cynthia T. Brown
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Surface Transportation Board
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ENTERED
Office of Proceedings

MAR 7- 2012

Part of
Public Record

Re: Notice of Intent to Participate in Hearing in FD 35506,
Western Coal Traffic League – Petition for Declaratory Order

Dear Ms. Brown,

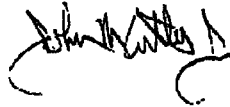
The Board is hereby notified of the intent of the following to participate in the hearing scheduled for March 22, 2012 in the above-referenced proceeding:

ALLIANCE FOR RAIL COMPETITION
MONTANA WHEAT & BARLEY COMMITTEE
COLORADO WHEAT ADMINISTRATIVE COMMITTEE
IDAHO BARLEY COMMISSION
IDAHO WHEAT COMMISSION
MONTANA FARMERS UNION
NEBRASKA WHEAT BOARD
OKLAHOMA WHEAT COMMISSION
SOUTH DAKOTA WHEAT COMMISSION
TEXAS WHEAT PRODUCER BOARD
WASHINGTON GRAIN COMMISSION

Brown, Cynthia T.
March 6, 2012
Page 2

The proposed speakers for Alliance for Rail Competition, et al., will be Terry C. Whiteside, Whiteside & Associates, 3203 Third Avenue North, Suite 301, Billings, MT 59102, (406) 245-5132, and the undersigned, and we request 10 minutes for the two speakers. Attached is a Summary of Testimony.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John M. Cutler, Jr.", with a stylized flourish at the end.

John M. Cutler, Jr.
Attorney for Alliance for Rail Competition

SUMMARY OF TESTIMONY OF ALLIANCE FOR RAIL COMPETITION, ET AL.

The Alliance for Rail Competition and the other agricultural commodity shipper interests identified in the cover letter to which this summary is attached (hereafter collectively "ARC") urge the Board to exclude the Berkshire Hathaway acquisition premium from BNSF URCS costs, and to exclude the premium when determining BNSF revenue adequacy. ARC bases its position on legal and policy considerations and on the public interest and the interests of ARC members, including utility coal shippers, shippers of agricultural commodities, and the farm producers they serve, and shippers of other commodities.

As more fully detailed in comments filed by Western Coal Traffic League, which ARC supports, and in ARC's previous comments, there is no merit to the legal arguments which constitute BNSF's main rationale for giving the railroad the benefit of the acquisition premium. In the context of Berkshire Hathaway's acquisition, the result would be a windfall for BNSF.

Also objectionable is the fact that STB regulation of BNSF rail rates on captive traffic would become less effective. As a consequence, the bargaining position of captive rail shippers via BNSF, including ARC members, would be adversely affected, making private sector solutions more difficult to achieve and less likely to benefit shippers facing excessive rates and rate increases.

As the Board is aware, BNSF will not hesitate to abuse its market power when dealing with major utilities shipping millions of tons of coal. Smaller and more isolated grain elevators and other shippers of agricultural commodities are even more vulnerable to abuse, because of the difficulty they face in attempting to fund even small rate cases.

BNSF argues that many of its customers are not captive. For such shippers, BNSF has no need of the acquisition premium, since it can change what it likes. BNSF also argues that it prices its services without regard to its rate base. ARC and other shipper parties have shown that BNSF is not indifferent to STB reasonableness standards when it sets or increases rates, or negotiates rate increases or contracts. But if BNSF were pricing solely based on what the market will bear, its use of enlightened (or not so enlightened) monopoly pricing as to its captive customers makes it all the more important to maintain effective regulatory constraints. Full SAC, SSAC, Three Benchmark and the nascent revenue adequacy constraint will all be weakened if the Board gives BNSF the benefit of the acquisition premium.

Captive shippers' protections under the Act are already too weak. There is no good reason in law or policy to exacerbate that trend by deciding this proceeding in favor of BNSF, Berkshire Hathaway (which has not supported the relief BNSF seeks), or other railroads and acquirers of railroads that might seek similar windfalls, at their captive shippers' expense, in similar transactions.